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No. 83-1054

In The
Supreme Court of the United States

October Term, 1983

DEBRA P. GRIMM,

Petitioner,

vs.

ERNEST F. PHILLIPS and
Q. V. LEINART,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether a jury instruction that in order to award punitive damages under 42 U.S.C. § 1983, the acts of the Defendant must be intentional and willful, and not just negligent will support an award of punitive damages under the standard announced by this court in *Smith v. Wade*, — U.S. —, 103 S.Ct. —, 75 L.Ed.2d 632 (1983).

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RESPONDENTS' BRIEF IN OPPOSITION

The Respondents, Ernest F. Phillips and Q. V. Leinart, respectfully request this Court deny the Petition for Writ of Certiorari, seeking review of the Sixth Circuit's opinion in this case. That opinion is reported at 705 F. 2d 179.

REASONS WHY THE WRIT SHOULD BE DENIED

This case was initiated in the United States District Court for the Eastern District of Tennessee where the Plaintiff/Petitioner obtained a judgment against the Defendants/Respondents in the amount of \$100,000.00 in compensatory damages and \$20,000.00 in punitive damages.

Upon appeal to the United States Court of Appeals for the Sixth Circuit, the judgment was upheld in all matters save the trial court's instruction to the jury on the discretionary award of punitive damages which jury award upon review by the Court of Appeals for the Sixth Circuit was reversed on the 19th day of April, 1983. The Sixth Circuit narrowly limited its reversal to the jury instruction on punitive damages and confined the impact of this reversal to a remand to the District Court for entry of a judgment in the amount of \$60,000.00 for compensatory damages, and provided further as follows:

Therefore the order of this Court is remanded to the district court for entry of judgment in the amount of \$60,000.00 unless the Plaintiff files with the district court a notice that she rejects the judgment in her favor in the amount of \$60,000.00 and demands a new trial. If she does file such a notice, a new trial shall be awarded on the punitive damages issue only. Since the finding of liability and the award of compensatory damages are no way intermingled with the punitive damages instruction, it would be unfair to force the Plaintiff to reargue her entire claim before a second jury. *Grimm*, at 183. (Decided April 19, 1983.)

On the 20th day of April, 1983, this Court decided the case of *Smith v. Wade*, — U.S. —, 103 S.Ct. —, 75 L.Ed.2d 632 (1983). Based upon this Court's decision in *Smith v. Wade*, *supra*, the Appellee filed a petition to rehear in the

Court of Appeals for the Sixth Circuit which petition having been granted and memorandums received the Sixth Circuit then amended its decision of April 19, 1983, by order filed September 23, 1983 which amendment was restricted to a restatement of the legal foundation upon which the Court of Appeals reversed the award of punitive damages in reviewing the trial court's jury instruction.

In its amended order the Sixth Circuit provided:

The District Court's instruction properly states the Defendants' conduct be willful in order to justify the assessment of punitive damages. However, the instruction does not inform the jury of the standard for punitive damages as recently pronounced by the Supreme Court in *Smith v. Wade*, 51 U.S.L.W. 4407, — U.S. —, (1983). In *Wade* the Supreme Court held that punitive damages could be assessed against the Defendant in the 1983 action where that Defendant acts with "reckless or callous indifference to federally protected rights of others". The standard articulated in *Wade* does not require finding of an intentional deprivation of a federally protected right. Instead, a high degree of negligence which the law characterized as reckless may also be sufficient to assess punitive damages against the § 1983 Defendant.

In reviewing the district court's punitive damages instruction, we find it erroneous. At an early point in the instruction, the district court judge stated, "punitive damages are allowed where the conduct of the Defendant shows a *disregard* for the rights of the person injured". (emphasis added.) This statement is clearly incorrect since *Wade* requires a reckless or callous disregard of the Plaintiff's rights. Hence, the District Court's instruction incorrectly states a significantly lower standard of negligence than is required by *Wade*.

The District Court's instruction also incorrectly states that:

"In order to allow punitive damages, the acts of the Defendant must be *intentional* and *willful* and not just negligently. There must be more than negligence to justify punitive damages" (emphasis added).

This statement is also incorrect because it states that there *must* be an intentional and willful deprivation by the Defendant in order to award the Plaintiff punitive damages. The Supreme Court expressly stated in *Wade* that it is unnecessary that a § 1983 Defendant act intentionally. A showing of reckless conduct is sufficient to support an award of punitive damages. In order to comply with the *Wade* standard, the District Court should instruct the jury that it may award punitive damages if it finds the Defendant willfully and intentionally deprived the Plaintiff of its federally protected rights *or* if the Defendant engaged in conduct that exhibited a reckless or callous disregard of the Plaintiff's rights the punitive damage instruction previously given by the District Court failed to meet the appropriate standard. Accordingly, we reverse the award of punitive damages."

In all other respects, the opinion remains unchanged.

The order set out above entered after the Sixth Circuit's review of the Petition to Rehear which was based upon this Court's decision entered subsequent to the original decision of the Court of Appeals as noted above constitutes a substitution of the reasoning for the reversal of the trial court's instruction for punitive damages and the remand of the trial court for a new trial on said issue taking into consideration *Smith v. Wade, supra*.

The impact of the order of amendment post-*Wade* is "advisory" and does not affect the rights of Petitioner to a new trial on the issue of punitive damages.

As the basis for its petition, Petitioner states that the trial court's jury instruction on the issue of punitive damages exceeds the standard announced by this Court in *Wade, supra*. It is clear that this Court in *Wade* held that reckless or careless disregard for a Plaintiff's rights *as well as* the intentional violation of federal law should be sufficient to trigger a jury's consideration of the appropriateness of punitive damages. The trial court instructed the jury in this action regarding punitive damages as follows:

Now, punitive damages are allowed where the conduct of the Defendant shows a disregard for the rights of the person injured, or the Plaintiff.

In order to allow punitive damages, the acts of the Defendant must be intentional and willful, and not just negligent. There must be more than negligence in order to justify punitive damages.

But, if you find that the Defendants acted willfully and intentionally, and thereby deprived the Plaintiff of her civil rights, then you may—you don't have to—allow punitive damages in addition to the civil damages (J.A. pp. 211-212).

As is pointed out by the Sixth Circuit in its order of amendment "disregard for the rights of the person injured" is an inaccurate statement of the law in that this Court requires a *reckless* or *callous* disregard for Plaintiff's rights. *Wade, supra*. In addition, the District Court's instruction as pointed out in the order of amendment erroneously required a finding that the act be intentional and willful as a basis for punitive damages. This Court found specifically in *Wade* that § 1983 does not require an intentional act.

The Petitioner's conclusion that the trial court's instruction exceeds the requirements of *Wade* is wholly unsupported in fact or theory.

In addition to the response set out above, Respondents would urge the denial of Petitioner's request for a writ of certiorari on the basis that this petition fails to meet the minimum requirements of *Rule 17. Supreme Court Rules*, in that it does not involve judicial proceedings so far departed from the accepted course that the Court's power of supervision is invoked nor does it involve an important question of federal law which is unsettled or in conflict with the applicable decisions of this Court.

This Court announced a very clear and straightforward standard in *Wade*, the United States Court of Appeals in response to *Wade* considered Petitioner's request for reconsideration of its opinion decided one day prior to the *Wade* decision. The Court of Appeals amended its original decision by superimposing the *Wade* logic on the facts in this action. The result of the Sixth Circuit Court of Appeals action was to reinstate Petitioner's claim for punitive damages. Petitioner retains her claim for punitive damages under the *Wade* standard and will receive a new trial on this issue.

Petitioner seeks no more than an advisory opinion before this Court which request fails to sustain any of the proper bases for the justification of this Court's consideration.

CONCLUSION

For these reasons, Petition for Writ of Certiorari should be denied.

Respectfully Submitted,
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